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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,919	10/06/2003	Bret A. Ferree	BAF-15303/29	2935
25006	7590	11/29/2005		
GIFFORD, KRASS, GROH, SPRINKLE & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			EXAMINER BAXTER, JESSICA R	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 11/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/679,919	Applicant(s) FERREE, BRET A	
	Examiner Jessica R. Baxter	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>01082004</u> . | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1-3 are objected to because of the following informalities: the acronym ADR is shown to be equivalent to artificial joint replacement. The specification defines the acronym as artificial disc replacement. The term joint should be replaced with disc. Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,605,417 to Fleischauer.

Fleischauer discloses a reduced-friction artificial joint replacement (ADR), comprising: a first endplate (13) component adapted for fixation to an upper vertebral body; a second endplate (14) component adapted for fixation to an upper vertebral body; and a wheel, bearing or other rotating element (18) between the two endplate components to reduce friction during spinal flexion, extension or other movements; including one or more

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rotating elements disposed on casters (32); including one or more elements rotatable about axes oriented generally medial to lateral.

4. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,375,683 to Crozet et al.

Crozet discloses a reduced-friction artificial joint replacement (ADR), comprising: a first endplate component (top, 21) adapted for fixation to an upper vertebral body; a second endplate (bottom, 21) component adapted for fixation to an upper vertebral body; and a wheel, bearing or other rotating element (30a, 30b) between the two endplate components to reduce friction during spinal flexion, extension or other movements; including one or more rotating elements disposed on casters (42) ; including one or more elements rotatable about axes oriented generally medial to lateral.

5. Claims 1 and 3 rejected under 35 U.S.C. 102(e) as being anticipated by PG-PUB. 2002/0156528 to Gau.

Gau discloses a reduced-friction artificial joint replacement (ADR), comprising: a first endplate component (10) adapted for fixation to an upper vertebral body; a second endplate component (11) adapted for fixation to an upper vertebral body; and a wheel, bearing or other rotating element (8) between the two endplate components to reduce friction during spinal flexion, extension or other movements; including one or more elements rotatable about axes oriented generally medial to lateral (FIG. 17).

6. Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,579,321 Gordon et al.

Gordon discloses a reduced-friction artificial joint replacement (ADR), comprising: a first endplate component (20) adapted for fixation to an upper vertebral body; a second

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endplate component (22) adapted for fixation to an upper vertebral body; and a wheel, bearing or other rotating element (18) between the two endplate components to reduce friction during spinal flexion, extension or other movements; including one or more elements rotatable about axes oriented generally medial to lateral (FIG. 1).

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jessica R Baxter  
Examiner  
Art Unit 3733

  
jrb

  
EDUARDO C. ROBERT  
PRIMARY EXAMINER